IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1874 OF 1999

1. Jainuddin Mohamed Miya Mukadam,
Age 72, Occupation - Agriculture
resident of Revdanda, Taluka
Alibag, District Raigad.

2. Subhash Prabhakar Patil,
Age 38, Occupation: Business
Resident of Pejari, Taluka
Alibag, District Raigad. ....Applicants.

V/s

1. State of Maharashtra

2. Senior Inspector of Police
Alibag Police Station, Alibag
District - Raigad.

3. District Collector and
Returning Officer, Raigad,
District Raigad. ....Respondents.

Mr. Hiranandani i/b C.G. Gavnekar for the applicants.

Mr. S.V. Gajre, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 12th January, 2006

ORAL JUDGMENT;

1. Heard the learned Counsel appearing on behalf of the applicants and the learned APP for the State.

2. The applicants have filed this application under section 482 of the Criminal Procedure Code for quashing the prosecution initiated by the Alibag

Police Station pursuant to the FIR being lodged vide C.R. No. 5 of 1998 against the present applicants under the provisions of section 3 of the Maharashtra Prevention of Defacement of Property Act, 1995. The applicant No.2 is an active worker of Peasants and Workers Party. The applicant No.1 was the Chairman at the relevant time of Alibag Taluka Sahakari Kharedi Vikri Sangh Ltd., Alibag which is a Co-operative Society registered under the Co-operative Societies Act. The applicant No.2 obtained on lease the tenement being Gala No.2 in a building constructed by Alibag Taluka Sahakari Kharedi Vikri Sangh Ltd., Alibag and permitted the applicant No.1 to carry on his political activities from the said Gala. The Society also executed a rent note in favour of applicant No.2 and further permitted him to carry on political activities of the said party. It is alleged in the complaint that on 1/1/1991, the Election Commission issued a notification for 12th Lok Sabha Elections and the election programme was announced in the constituency of Raigad District. A complaint was registered against the applicants by the Alibag Police Station and the office of the applicant No.2 was raided and the posters of the candidates contesting the elections were confiscated and the panchanama was made and, thereafter, the present complaint was filed.

3. It is submitted by the learned Counsel appearing on behalf of the applicants that mere perusal of the complaint indicates that even if the averments in the complaint are taken on its face value, no offence could be said to have been made out under the provisions of the said Act. The perusal of the panchanama dated 9/2/1998 reveals that the posters were found in the said Gala which was given on rent to applicant No.2. Section 3 of the said Act prohibits pasting and defacement of the property by fixing or pasting such posters. In the present case, posters were found in the Office of the applicant No.2 and they were not pasted on any property and thus no case has be made out against the present applicants. The F.I.R., therefore, is liable to be quashed and set aside. Criminal Application is allowed in terms of prayer clause (a).

4. Accordingly, Criminal Application is disposed of in the above terms.

V.M. KANADE, J.